

**Background Document  
For Proposed Amendments To**

**301 CMR 40.00  
Toxics Use Fee**

**And**

**301 CMR 41.00  
Toxic or Hazardous Substance List**

**Regulatory Authority:  
M.G.L. Chapter 21I, §§ 4, 9, and 19**

**October 2007**

## **I. INTRODUCTION**

The Executive Office of Energy and Environmental Affairs (EEA), on behalf of the Administrative Council for Toxics Use Reduction, is proposing to amend the Toxics Use Fee regulations, 301 CMR 40.00, and the Toxic or Hazardous Substance List regulations, 301 CMR 41.00, to implement statutory changes to the Toxics Use Reduction Act (TURA, MGL c. 21I) enacted in July 2006.

## **II. BACKGROUND**

Originally enacted in 1989, TURA requires certain facilities to report their use of toxic chemicals and examine ways to decrease their use of toxic chemicals and wastes generated, with the goal of protecting public health, the environment, and workers, while helping businesses to become more competitive.

TURA committed Massachusetts to reduce toxic byproducts (or wastes) by 50%, a goal that was met in 1999. The highly successful TURA program has helped Massachusetts businesses to reduce toxics use by 41% and toxic byproducts by 65%<sup>1</sup>, reducing chemical transportation risks, workplace hazards, and toxics in products, while helping Massachusetts businesses remain competitive in a global marketplace increasingly aware of toxics issues.

While TURA's primary goal was met several years ago, program stakeholders agreed that additional toxics use reduction opportunities existed and that the program should be updated and improved in light of the experience gained from TURA over its 15-year history. On July 28, 2006, "An Act Amending the Toxics Use Reduction Act" (Chapter 188 of the Acts of 2006) was signed into law, representing the first major overhaul of the statute since it was first enacted in 1989.

The 2006 TURA amendments build on the program's success by focusing attention on reducing the use of higher hazard toxics, encouraging businesses to increase environmental performance through resource conservation plans and environmental management systems, and streamlining reporting and planning requirements.

From its inception, TURA established an Administrative Council for Toxics Use Reduction that has the responsibility, among other duties, to establish and adjust Toxics Use Fees and the Toxic or Hazardous Substance List. As the chair of the Council, the Secretary of EEA promulgates the Council's regulations.

## **III. DESCRIPTION OF THE PROPOSED REGULATIONS**

### **A. Toxics Use Fees, 301 CMR 40.00**

TURA requires facilities that report toxics use to pay an annual toxics use fee. This fee consists of a "base fee" based on the number of employees at a facility and a "per chemical" fee based on

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<sup>1</sup> Measured using 2004 data normalized for changes in production reported by a core group of industries that have been subject to reporting since 1990.

how many toxics are reported. The Massachusetts Department of Environmental Protection (MassDEP) assesses and collects the toxics use fees.

The 2006 statutory amendments gave the Council authority to adjust the fees for substances it designates as higher hazard and to review and propose changes to the overall fee structure (which the Council has not yet done); eliminated the “per chemical” fee for lower hazard substances; replaced an escalating late fee with a flat \$1,000 late fee; and transferred responsibility for reviewing fee waiver applications from EEA to MassDEP.

To implement these statutory changes, the proposed revisions to 301 CMR 40.00 do the following:

- Add new definitions and/or make definitions consistent with the definitions in MassDEP’s TURA regulations, 310 CMR 50.00;
- Eliminate a toxics use fee for toxics manufactured or processed in amounts less than 25,000 pounds, since these toxics are no longer reportable under TURA (unless they are PBT chemicals or higher hazard substances, both of which have lower reporting thresholds);
- Eliminate the “per chemical” fee for any toxic designated as a lower hazard substance;
- Eliminate a requirement that the Council annually adjust toxics use fees based on changes in the Consumer Price Index, in anticipation of an upcoming review by the Council of the toxics use fee structure;
- Establish a late fee for toxics use reports filed more than 30 days late or toxics use fees paid more than 30 days late; and
- Give MassDEP responsibility for reviewing fee waiver applications (instead of EEA).

## **B. Toxic or Hazard Substance List, 301 CMR 41.00**

### **1. Higher Hazard Designations**

When first enacted, TURA did not differentiate toxics according to their level of hazard. The 2006 statutory amendments gave the Council authority, in consultation with the Toxics Use Reduction Institute (TURI) and the Science Advisory Board (SAB), to designate a toxic substance as higher hazard or lower hazard, or to leave the substance uncategorized. For a higher hazard substance, the threshold for reporting is lowered to 1,000 pounds, and the Council has authority to further lower the reporting threshold. Persistent, bio-accumulative, and toxic chemicals (PBTs) are automatically designated as higher hazard substances, but already have reporting thresholds lower than 1,000 pounds as established by the U.S. Environmental Protection Agency (EPA). For a lower hazard substance, the “per chemical” fee is eliminated.

The following is the process for designating higher hazard and lower hazard substances:

1. The SAB reviews the scientific data and recommends designations;
2. TURI prepares a policy analysis of the recommended designations for the Council's consideration;
3. The Council takes action on the recommended designations;
4. EEA promulgates the Council's action in 301 CMR 41.00;
5. The designations take effect in the calendar year after the year the designations are promulgated in 301 CMR 41.00.

To date, the SAB has recommended 11 substances to be considered for designation as higher hazard substances: cyanide compounds, ethylene oxide, nickel compounds, chlorine, arsenic compounds, cadmium compounds, formaldehyde, benzene, trichloroethylene, perchloroethylene, and hydrogen cyanide. The SAB also has recommended 11 substances to be considered for designation as lower hazard substances: n-butyl alcohol, sec-butyl alcohol, ethylene glycol, methanol, silver in alloy form, zinc in alloy form, acetone, acetic acid (>12% concentration), isobutyl alcohol, methyl ethyl ketone, ethyl acetate.

TURI completed two policy analyses for recommended higher hazard substances (trichloroethylene and cadmium and cadmium compounds) that were provided to the Council for consideration. At its October 31, 2007 meeting, the Council agreed to designate trichloroethylene and cadmium and cadmium compounds as higher hazard substances. These proposed regulations would codify the Council's decisions in 301 CMR 41.00 by listing trichloroethylene, cadmium and cadmium compounds as higher hazard substances. If final regulations that include these designations are promulgated in 2007, the applicable reporting threshold for these substances would be 1,000 pounds for the 2008 reporting period, with toxics use reports reflecting the new thresholds due by July 1, 2009.

## 2. CERCLA List "Sunset" Clarification

TURA's Toxic or Hazardous Substance List is based on chemical lists established by two federal statutes: Section 313 of EPCRA (Emergency Planning and Right-to-Know Act) and sections 101(14) and 102 of CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act). The EPCRA chemicals are the same chemicals reported under EPA's Toxics Release Inventory (TRI) program. Historically, most substances reported under TURA are EPCRA substances. Only 81 CERCLA chemicals (out of more than 400 "CERCLA-only" chemicals) have ever been reported under TURA.

The 2006 statutory amendments mandated a review of the CERCLA chemicals with a "sunset" provision. CERCLA chemicals will no longer be listed as of August 1, 2008, unless the Council, based on recommendations from TURI and the SAB, decides to retain any of the CERCLA chemicals. The process for reviewing CERCLA chemicals is similar to the process described above for designating substances as higher hazard or lower hazard. The Council makes final decisions whether to retain any CERCLA chemicals and those decisions must be codified in 301 CMR 41.00 to take effect.

The SAB began evaluating the CERCLA chemicals in Fall 2006 but has not yet completed its review. The SAB and TURI have recommended that CERCLA chemicals should be retained

until the review is completed. TURI has been working closely with the SAB and believes the SAB review, along with TURI's accompanying policy analysis, will be completed so that the Council can take action by August 1, 2008 (as directed by the 2006 statutory amendments). However, once the Council takes action, additional time would be needed to codify in 301 CMR 41.00 the Council's action to retain any CERCLA chemicals.

At its October 31, 2007 meeting, the Council agreed to maintain on the toxic or hazardous substance list for the calendar year reporting period 2008, the current list of reportable CERCLA chemicals. The current proposed regulations would retain all CERCLA chemicals for reporting year 2008 to allow the Council to decide, by August 1, 2008, which chemicals to retain, and to allow time to revise 301 CMR 41.00 by the end of 2008, before the CERCLA chemicals are sunsetted from the list.

#### **IV. Impacts of Proposed Revisions**

##### **A. Economic Impacts**

The 1,000 pound reporting threshold for trichloroethylene and cadmium and cadmium compounds may lead to 60 to 110 new facilities reporting and planning in the TURA program. Based on estimates by TURA staff, it is likely that many of the facilities affected will have fewer than 50 employees. This regulation only affects facilities with more than 10 employees in TURA covered SIC codes. The sectors most likely to begin reporting include chemical preparations (SIC 2899), paints and allied products (SIC 2851), industrial organic chemicals (SIC 2869), plating (SIC 3471) and facilities engaged in the production of colorants, resins and plastics.

These facilities will be required to prepare and submit a toxic use reduction report (Form-S) to the MassDEP annually, and prepare a toxic use reduction plan and submit a plan summary update to the MassDEP in even numbered years.

The cost associated with annual reporting to MassDEP consists of a base fee and a per-chemical fee. The base fee depends on the size of the facility; the per-chemical fee is the same for all facilities, and is set at \$1100. If a facility were already a TURA filer, then reporting on a higher hazard chemical would simply add \$1100 to the amount already paid by that facility. If they are not currently covered by TURA, then the fees associated with reporting a higher hazard chemical are as follows:

<b>Number of employees</b>	<b>Base fee</b>	<b>Base fee + one chemical</b>
10-50	\$1,850	\$2,950
50-100	\$2,775	\$3,875
100-500	\$4,625	\$5,725
> 500	\$9,250	\$10,350

The fees associated with annual reporting are anticipated to be \$2,950 for a typical new facility using a higher hazard chemical.

Companies will also incur costs associated with TUR report and plan preparation. Facilities will incur larger preparation costs the first time they file a Form-S and prepare a toxics plan, than they will in subsequent reporting and planning years. It's important to note that companies are not required to implement specific TUR alternatives identified in their plan. Program evaluation has shown they are likely to adopt and implement many options that have a positive economic benefit. The 1997 TURA program evaluation found that in the first five years of TURA, the program produced a net economic benefit for the regulated community and the Commonwealth as a whole. Compliance costs for all firms totaled \$67.4 million; as a result of planning companies chose to make capital investments totaled \$37 million; and savings in operating costs totaled \$120.3 million (all figures in 2007 dollars). It is anticipated that these economic benefits would be realized by new companies to the TURA program.

## **B. Agricultural Impacts**

Pursuant to MGL c. 30A, Section 18, State agencies must evaluate the impact of proposed programs on agricultural resources within the Commonwealth. The proposed revisions are intended to further reduce the use and release of toxic substances into the environment. Many of the toxic emissions that often are addressed in toxics use reduction plans are volatile organic compounds (VOCs) that contribute to the formation of ground-level ozone, which adversely affects vegetation and crops. Therefore, this proposal is likely to have a positive impact on agricultural production to the extent that VOCs are reduced through toxics use reduction.

## **C. Impacts on Municipalities**

Pursuant to Executive Order 145, State agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. Municipalities are statutorily exempt from TURA and therefore the proposed amendments will have no direct effect on them. However, municipalities are likely to benefit from reduced pollution and associated risks to the extent the proposed amendments reduce the use of toxic substances in their jurisdictions.

## **D. MEPA**

The proposed amendments are "categorically exempt" from the "Regulations Governing the Preparation of Environmental Impact Reports," 301 CMR 11.00, because the proposed amendments do not lessen the stringency of any environmental standards.